

1 sorry. Excuse me. Our first designated speaker would be.
2 But first I wanted to see if there are public officials who
3 wanted to speak before us. I believe that from the Attorney
4 General's Office of Wisconsin, we have a representative of
5 the Attorney General's Office. Mr. Hughes, if you would
6 like to come speak, please.

7 MR. ATKINSON: And if there are any other
8 government speakers --

9 DR. KRATTENMAKER: If there are any others, if you
10 could identify yourself to Michelle Carey, please.
11 Otherwise, we would next go to the U.S. Hispanic Chamber of
12 Commerce. Thank you, Bob. For the speaker's benefit, there
13 is also a running clock that you can see on the videotape
14 here. Mr. Hughes.

15 MR. HUGHES: Thank you. Good morning. My name is
16 Edwin Hughes. I'm an Assistant Attorney General with the
17 Wisconsin Department of Justice. I helped coordinate the
18 review of the competitive impact of the SBC-Ameritech merger
19 by a group of State Attorneys General.

20 And I helped draft the ex parte comments that were
21 submitted to you last week by the Attorneys General of
22 Indiana, Michigan, Missouri and Wisconsin, along with a
23 report by economists Gregory Raskin and Matthew Marcurio.

24 I am here today on behalf of the Wisconsin
25 Department of Justice. On the basis of the review we

1 conducted, we concluded that this merger raises significant
2 competitive concerns that this Commission is well equipped
3 to evaluate and to address. The merger will eliminate
4 potential competition from SBC and Ameritech into each
5 other's territory that may be particularly significant.

6 The merger would also strengthen the ability of
7 the merged firm to resist the dissipation of its market
8 power through regulatory action. We've spelled out our
9 analysis of the competitive concerns in the ex parte
10 comments and they seem to track fairly closely with the
11 concerns that Professor Krattenmaker described.

12 The Attorneys General recommend a straight-
13 forward, logical and measured response to these competitive
14 concerns. SBC and Ameritech should not be able to
15 consummate their merger until they have won Section 271
16 approval for a majority of their combined states including
17 states in both of their regions.

18 This approach has a number of advantages. Here
19 are seven: First, it would permit the parties to achieve
20 whatever benefits the merger promises once the Section 271
21 approvals have been obtained. We don't consider ourselves
22 opponents of the merger and we're not out to kill the deal.
23 The notion that requiring Section 271 approval is a poison
24 pill designed to kill the deal is -- comes as news to me
25 certainly.

1 Second, this approach imposes a requirement that
2 is directly responsive to the competitive concerns that
3 prompt reasonable reservations about merger approval. This
4 merger is a concern because with the impoverished state of
5 competition in large portions of SBC's and Ameritech's home
6 territories. Requiring Section 271 approval compels the
7 parties to take concrete and specific steps designed to
8 enable competition in their home regions to develop.

9 Third, this approach relies on an established
10 regulatory process, one that Congress has explicitly adopted
11 as a reasonable prerequisite to approval of RBOC activities
12 that raise competitive concerns.

13 Fourth, this approach provides strong incentives
14 to SBC and Ameritech to complete their market opening
15 obligations imposed upon them by the 1996 Act. Fifth,
16 requiring Section 271 approval would bring some tangible
17 benefits to those of us who are customers in Ameritech's and
18 SBC's home territories, but who do not stand to gain much in
19 the way of direct benefits from this merger.

20 Sixth, and importantly, this approach would not
21 impose any new post-merger obligations on the parties with
22 their inevitable disputes about compliance and enforcement.
23 Once the Section 271 process has run its course in a
24 majority of SBC and Ameritech states, the merger can proceed
25 and the regulators can just get out of the way.

1 Finally, the parties have acknowledged that
2 obtaining Section 271 approval is a prerequisite for the
3 success of their national-local strategy in that the
4 potential benefits from that strategy are what make this
5 merger worthwhile for SBC. Our approach is therefore
6 consistent with the parties' own intentions.

7 Requiring Section 271 approval in a majority of
8 their states before SBC and Ameritech may complete their
9 merger is a prudent, logical and relatively unobtrusive
10 response to the real competitive concerns this merger
11 raises. And we commend this approach for the Commission's
12 consideration. Thank you.

13 MR. ATKINSON: Mr. Hughes, thank you.

14 DR. KRATTENMAKER: Appreciate it. Any other
15 government officials? We thank you, Mr. Hughes. Then we
16 will next hear from the U.S. Hispanic Chamber of Commerce.
17 Mr. Herrera.

18 MR. HERRERA: Good morning. My name is George
19 Herrera and I am President and Chief Executive Officer of
20 the United States Hispanic Chamber of Commerce. The United
21 States Hispanic Chamber of Commerce is the leading business
22 development organization in the United States servicing the
23 interests of the Hispanic business community.

24 With over 200 Hispanic chambers of commerce as
25 members representing over 800,000 Hispanic-owned businesses,

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1 we actively promote the economic development and expansion
2 of Hispanic entrepreneurs. I am here today to affirm our
3 organization's support of the SBC Communications, Inc. and
4 Ameritech Corporation transfer of control applications.

5 The United States Hispanic Chamber of Commerce
6 urges the FCC to review this merger in terms of the public's
7 interest as it relates to the employees, consumers and
8 communities this merger would affect.

9 In this regard, we believe that SBC has an
10 exemplary record of serving the public's best interests.
11 You may recall that in April of 1997, SBC merged with the
12 Pacific Telesys, the parent of Pacific Bell. At the time of
13 this merger, several questions needed to be answered: Is
14 the merger good for consumers? Would SBC still support the
15 communities it served? Would the company invest in its
16 employees? All questions which have the public's best
17 interest at heart.

18 Today, two years later, SBC has not only met its
19 commitment and promises, but has more than exceeded its
20 expectations. More than 4,500 new positions have been
21 created, four times SBC's original commitment. Installation
22 time statewide has been reduced for both residential and
23 business customers.

24 Pacific Bell's basic rates have not increased
25 since the merger. Overall reductions in tariffs in

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1 California since the merger total 495 million with
2 residential flat rates close to 20 percent below the
3 national average.

4 Local competitors in California have obtained an
5 estimated 1.2 million lines, an indication they still have
6 an opportunity to compete. 1998 corporate charitable and
7 community contributions totaled 11.8 million dollars, four
8 million greater than 1996. And most important to my
9 constituency, Pacific Bell purchases 25 percent of all its
10 supplies and services from businesses owned by minorities,
11 women and/or disabled veterans, an increase since the
12 merger.

13 SBC's merger with Pacific Bell for consumers,
14 employees and the community it serves. This performance
15 should be indicative to the FCC of how SBC would implement
16 its merger with Ameritech. It is the philosophy of the
17 United States Hispanic Chamber of Commerce and of SBC to
18 ensure that mergers need not create winners or losers.

19 This should result in more job opportunities,
20 enhance customer service and increase procurement
21 opportunities for under-served minority markets. It is this
22 mutual philosophy and demonstrated track record that
23 resulted in SBC becoming the first telecommunications
24 company to receive the United States Hispanic Chamber of
25 Commerce Corporation of the Year Award at our 18th Annual

1 Convention in Houston, Texas in 1997.

2 We at the United States Hispanic Chamber of
3 Commerce emphatically affirm our support for this merger.
4 We ask that you take a long, hard look at SBC's exemplary
5 record of community service. A review of SBC's performance
6 will make your decision quite easy. It would affirmatively
7 show positive public interest benefits.

8 The U.S. Department of Justice has given the green
9 light to this merger, indicating that there are no anti-
10 competitive effects. This merger is in my constituent's
11 best interest. The United States Hispanic Chamber of
12 Commerce supports the SBC-Ameritech merger and we ask that
13 the FCC expeditiously move forward with its approval.

14 MR. ATKINSON: Mr. Herrera, thank you.

15 MR. HERRERA: Thank you very much.

16 DR. KRATTENMAKER: Thank you very much. Next on
17 our list is AT&T. Mr. Rosenblum.

18 MR. ROSENBLUM: Good morning. Thanks a lot. My
19 name is Mark Rosenblum and I am proud to represent AT&T here
20 today, not because we have a lot of chutzpa, but because we
21 have a lot of factual things to talk about.

22 In that respect, it would be tempting to respond
23 to Paul Mancini and talk a lot about other things. But
24 we're glad to talk today about the SBC-Ameritech merger and
25 I think it's a safe bet that we'll get a chance to talk

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1 about those other things pretty soon.

2 Local competition has been painfully slow to
3 develop for a number of reasons including the sheer size and
4 scope of the incumbent local monopolies and the lack of
5 their cooperation in opening their markets. This
6 circumstance has prompted AT&T's recent decisions to invest
7 in cable systems to support truly competitive, all-distance
8 telephony to our residential customers. We are convinced we
9 need facilities to rely upon to be available for the
10 services we want to offer our customers.

11 But this circumstance also sharply distinguishes
12 our recent transactions from this one and from other
13 incumbent LEC mergers. While they seek to consolidate
14 monopolies and forestall competitive entry, we seek the
15 means and the scope to launch the kind of competitive entry
16 and rivalry that the Telecom Act anticipates.

17 But regardless of how we or any other CLEC
18 ultimately plans to bring true competition to local
19 customers, it's still going to be the case that we and the
20 other CLECs will have to rely on the ILEC facilities and
21 systems, at least to some extent, for the foreseeable
22 future. And it is thus important for the Commission to
23 address the heightened barriers to entry that this merger
24 can generate.

25 We've submitted a detailed, written ex parte that

1 proposes these conditions. And I refer to that for the
2 specifics. I'm going to highlight our suggestions briefly
3 here and then explain how they address the specific concerns
4 raised in Chairman Kennard's letter.

5 First, to assure that this merger will not
6 interfere with the companies willingness fully to open their
7 markets as required by the law, we think the Commission
8 should require that the applicants adopt in all of their in-
9 region states a New York-style, independent, third party
10 test of OSSes and systems to demonstrate that these systems
11 work.

12 We also think that following a successful
13 independent test, there should be a 90-day live test for
14 interested CLECs at commercial volume levels in at least one
15 major market in every state to show that these systems
16 really work in the real market.

17 We also think the Commission should require the
18 merged entity to provide commercially operational and
19 uniform electronic interfaces and business rules throughout
20 its region to facilitate the CLECs entering multiple markets
21 in the region.

22 We think the Commission should require the
23 applicants to make all unbundled networks available for any
24 service including advanced data service, and that they be
25 priced in accordance with the methodology adopted in the

1 FCC's local competition order.

2 Finally, we think the Commission should impose a
3 most-favored nation obligation, both as to pre-merger
4 commitments and as to the work plan that we think the
5 applicants should file describing how UNEs will be made
6 available so that the most favorable terms that are obtained
7 in any given state will be made available in all the other
8 states where SBC and Ameritech operate.

9 Next, to ensure that the merger will promote the
10 objectives of the Telecom Act to encourage competition in
11 all other telecom markets, we think the applicants should be
12 required to reduce all carrier-to-carrier access charges to
13 true cost-base levels. We think the economic distortion and
14 opportunity for predatory conduct presented by today's
15 access charge structure is magnified when incumbent LECs
16 merge and control both ends of access charges for so large a
17 body of customers.

18 We also think that the applicants should be
19 required that when customers call them to establish or
20 change local service, they be required to remain neutral in
21 explaining to customers their right to select long distance
22 carriers. Many customers still select long distance
23 carriers when they call the local exchange carrier. And it
24 would be unfair for a merged ILEC to use this expanded
25 captive audience either to favor their own services or

1 disadvantage competitors.

2 Finally, the only conceivable benefit from this
3 merger would be the increased local competition that could
4 result from the so-called national-local strategy. It is
5 essential that SBC and Ameritech be required to deliver on
6 their promises in this regard.

7 Before they are allowed to seek Section 271 relief
8 in any of their in-region states, we think they should be
9 required to provide meaningful business and residential
10 local exchange service in at least one new out-of-region
11 state of comparable size.

12 Again, I respectfully refer to our written ex
13 parte for the complete details of our proposal. And I thank
14 the Commission and the staff for your time today. Thank
15 you.

16 DR. KRATTENMAKER: Thank you. We will next here
17 from the Alarm Industry Communications Committee. Mr.
18 Augustino, welcome.

19 MR. AUGUSTINO: Good morning. My name is Steve
20 Augustino. And I'm here on -- from Kelly, Dry and Warren.
21 I am here on behalf of the Alarm Industry Communications
22 Committee, or AICC. I am here to address the alarm
23 monitoring provisions that you, Professor Krattenmaker,
24 called so obscure a little bit earlier this morning. I hope
25 that I can bring them out into the light and help clarify

1 those provisions, as well.

2 AICC's interest in the merger stems from the fact
3 that in order to comply with the alarm monitoring
4 restrictions of Section 275 of the Communications Act,
5 Ameritech must divest its wholly owned subsidiary, Security
6 Link from Ameritech -- or Security Link before it merges
7 with SBC. Any Commission order approving the merger must
8 make this divestiture a pre-condition.

9 This divestiture is required because Section 275
10 prohibits SBC from engaging in alarm monitoring either
11 directly or through an affiliate. After the merger, this
12 restriction will continue to apply to SBC. Therefore, SBC
13 cannot lawfully acquire an affiliate such as Ameritech that
14 provides alarm monitoring services.

15 Now, there are two relevant provisions of Section
16 275. First, there is Section 275(a)(1) which is one simple
17 sentence. It states, and I quote, "No Bell operating
18 company or affiliate thereof shall engage in the provision
19 of alarm monitoring services" for a period of five years.

20 The Commission has already ruled that this
21 restriction prohibits SBC from owning or operating an alarm
22 monitoring company, from obtaining more than a ten percent
23 equity interest in an alarm monitoring company, from
24 reselling alarm monitoring services, from intertwining its
25 interests with an alarm monitoring, and from obtaining a

1 financial stake in the commercial success of an alarm
2 monitoring company.

3 The second provision, Section 275(a)(2) allows,
4 again, I quote, "A Bell operating company that was engaged
5 in the provision of alarm monitoring services as of November
6 30th, 1995" to continue to provide such pre-existing alarm
7 monitoring services. Now, that provision comes with certain
8 restrictions. Those restrictions are the subject of
9 separate show-cause orders, and they are not implicated
10 here. I am not here to talk about those.

11 The Commission has also previously ruled that only
12 the Ameritech operating companies are -- qualify under
13 Section 275(a)(2) and, therefore, only the Ameritech
14 operating companies are grandfathered. Both interpretations
15 of Section 275(a)(1) and (a)(2) were unanimously reached by
16 the Commission in 1997.

17 In view of these prior Commission rulings, all
18 parties agree that SBC could not lawfully -- I'm sorry, that
19 SBC could not lawfully purchase Security Link directly from
20 Ameritech. Yet Ameritech now argues that if SBC purchases
21 Security Link plus the Ameritech operating companies,
22 Section 275(a)(1) no longer applies.

23 In effect, Ameritech claims that SBC can buy its
24 way out from under the restrictions of Section 275. This is
25 patently absurd. It is axiomatic that a company subject to

1 a line of business restriction cannot escape that
2 prohibition merely by acquiring a company subject to a
3 lesser restriction.

4 Indeed, if we were here dealing with the
5 applicability of Section 271's long distance restriction, I
6 probably would not even be sitting at this table at this
7 time. This is illustrated by the proposed combination of
8 Bell Atlantic and GTE. In that proceeding, there is no
9 dispute that even though GTE by operation of the 1996 Act is
10 permitted to provide interlata services, Bell Atlantic does
11 not succeed to GTE's interlata authority in the merger.

12 These two companies have agreed to divest GTE's
13 interlata services as a condition of their merger. Section
14 275 is no different. SBC's alarm monitoring restriction
15 does not disappear when it acquires Ameritech. Both before
16 and after the merger, SBC and its operating companies are
17 subject to a specific prohibition on their provision of
18 alarm monitoring services either directly or through an
19 affiliate such as Security Link.

20 Nothing in the merger modifies the terms of
21 Section 275. And the grandfathering provision that
22 Ameritech relies upon by its terms addresses only Bell
23 operating companies that meet certain requirements which
24 this Commission has already ruled are met only by the five
25 Ameritech operating companies.

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1 As the Commission said, the grandfather clause
2 "has no applicability to non-grandfathered BOCs." Yes?

3 DR. KRATTENMAKER: One minute.

4 MR. AUGUSTINO: Oh, I'm sorry. In a recent ex
5 parte order, Ameritech engaged in some of its now familiar
6 pretzel logic by claiming that its rights under Section
7 275(a)(2) are transferrable to SBC. It tries to expand
8 275(a)(2) to include any other affiliate. But this is
9 flatly wrong.

10 The grandfathering provision cannot be bought or
11 sold. It applies only to five specific entities, the
12 Ameritech operating companies, and it is not and cannot be
13 expanded to other Bell operating companies.

14 In short, SBC is governed by Section 275(a)(1)
15 which prohibits an affiliation with an alarm monitoring
16 company. Without divestiture of Security Link, SBC -- the
17 merger will create just this type of an unlawful
18 affiliation. Therefore, this merger must be conditioned on
19 divestiture of Security Link to avoid a violation of Section
20 275.

21 DR. KRATTENMAKER: Thank you. We will next hear
22 from Sprint. Mr. Kesternbaum, welcome.

23 MR. KESTERNBAUM: Thank you, Mr. Krattenmaker. In
24 its discussions with the Commission staff, Sprint has made
25 clear that no conditions, no matter how carefully drafted,

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1 can fully ameliorate the anti-competitive consequences of
2 the pending merger. I think that was reflected in your
3 opening remarks.

4 It's quite clear that conditions could not restore
5 the benchmarks that have been lost; that they cannot restore
6 the competition between the two companies that have been
7 lost. And they cannot restore the change incentives and
8 ability to inhibit competition.

9 I would just like to say that Sprint has not
10 engaged in widespread alliance-making. And it has not been
11 the subject of a merger so far. Deutsche Telecom and France
12 Telecom have bought only ten percent each of Sprint. Sprint
13 continues to function as an independent company. And I
14 think that's evident by the fact that I'm not speaking
15 German or French here today.

16 As for the national-local strategy, I think it can
17 best be described as tenuous. Maybe it would even be better
18 described as pot-shot worthy. The -- the need to have a --
19 the fact that neither Ameritech nor SBC are large enough to
20 compete seems questionable on its face.

21 However, Sprint also believes that appropriately
22 framed conditions can help diminish certain problems that
23 have arisen and presently remain as impediments to local
24 competition with emerging entities. In seeking such
25 conditions, it is important for the Commission to learn --

1 for the insufficiency of the Bell Atlantic-NYNEX conditions
2 and to bear in mind a few parameters.

3 To the extent practicable, the conditions imposed
4 by the Commission should be fulfilled prior to the merger
5 itself. Obviously, after the merger with the horse out of
6 the barn, the Commission has far less leverage in ensuring
7 cooperations.

8 The conditions imposed by the Commission must also
9 be as specific as possible. This is necessary so that the
10 conditions are to a large extent self-enforcing and so that
11 they do not give rise to more disputes than they attempt to
12 resolve.

13 Nevertheless, it should probably be recognized
14 that it is impossible to design conditions with such a
15 degree of specificity that it is beyond the imaginations of
16 lawyers to find legitimate questions and perhaps in some
17 cases, not so legitimate questions.

18 To handle future disputes, the Commission should
19 consider establishing as part of any set of conditions,
20 procedures for binding arbitration. Such procedures can be
21 voluntarily established in advance on a mutual basis between
22 the merging parties and potential competitors.

23 In addition, whatever conditions are adopted, they
24 need to possess teeth. A monopoly, particularly a monopoly
25 the size of SBC and Ameritech, will not open its markets to

1 competition without a struggle. The Commission has to be
2 prepared to accept serious enforcement of whatever
3 conditions it adopts.

4 Sprint has proposed a set of conditions that are
5 intended to overcome specific problems that it has
6 encountered in seeking to open local markets in Bell -- I'm
7 sorry, in SBC and Ameritech territory. Other carriers, both
8 CLECs and ILECs, have not surprisingly encountered very --
9 very similar problems. And these problems are likewise
10 reflected in the conditions that they have recommended.

11 It is probably fair to say that the submissions
12 make clear that there is widespread agreement about the need
13 for help in three primary areas: 1) The establishment of a
14 bundle network elements, UNES, on more certain terms and
15 conditions necessary to provide --

16 DR. KRATTENMAKER: One minute.

17 MR. KESTERNBAUM: -- facilities-based competition
18 and for both traditional and advanced services; 2) the
19 establishment of rules and procedures for operational
20 support systems necessary to enable competitive local
21 networks to operate as seamless units; and 3) the
22 establishment of rules for co-location of facilities.

23 There are also a number of problems which,
24 although widespread, are of particular importance to Sprint
25 because of its plans to provide competition as part of an

1 integrated package of broad band services; namely, Sprint
2 ION.

3 The Commission's desire to promote the competitive
4 provision of broad band services requires that everyone have
5 access to the same market information; specifically, which
6 facilities are capable of supporting XDSL technology.
7 Sprint has proposed, therefore, that the merged telephone
8 companies establish a database that will contain all of the
9 relevant data including XDSL capability of their loops.

10 Second, Sprint proposes that any central office
11 where SBC and Ameritech have begun to offer XDSL services
12 must be made -- they must make available XDSL network
13 elements on a combined basis of the unit platform. And
14 last, Sprint proposes that the merger not be permitted to
15 prohibit local traffic from being carried over special
16 access facilities provided pursuant to interstate tariffs.
17 Thank you.

18 DR. KRATTENMAKER: Thank you. Our thinking is
19 that we'll do at least two more speakers before taking a
20 lunch break. Is that -- probably two more. And we'll next
21 here from NextLink. Mr. Salezni.

22 MR. SALEZNI: Thank you. Mr. Atkinson, Mr.
23 Krattenmaker, I appreciate the opportunity to be here. My
24 name is Jerry Salezni. I am a Senior Vice President for
25 External Affairs for NextLink Communications, Incorporated.

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1 Thank you for the time to talk about the SBC-
2 Ameritech merger and to explore conditions to help ensure
3 that if the proposed merger is approved and it is allowed to
4 go forward, it results in the benefits to consumers and the
5 growth of competition promised by the merger applicants.

6 NextLink is a creation of the Telecommunications
7 Act. It was founded by telecommunications entrepreneur,
8 Craig McCaw, who continues to be the company's largest and
9 controlling shareholder. By the way, he'll be very
10 interested to hear that Nextel is now owned by MCI-WorldCom.
11 It's been one of those things he's missed I think in his
12 participation as the Executive Committee Chairman.

13 NextLink develops and operates its own high
14 capacity, local and national fiber optic networks; wireless,
15 they provide local, long distance data and enhanced
16 telecommunication services. Despite our meager size, we
17 have a market cap. of only 3.5 billion which absolutely
18 pales in comparison to current SBC or current Ameritech.

19 The company currently operates in 23 facility-
20 based networks in 38 markets, including some in California,
21 Ohio, Texas and Illinois. In each of these markets,
22 NextLink competes primarily with the incumbent local
23 exchange carrier for customers, while at least for the
24 foreseeable future remains dependent upon the ILEC's
25 compliance with its obligations under the Telecom Act of

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1 1996 to serve our customers.

2 Key elements to this relationship include the
3 ILEC's nondiscriminatory provision of interconnection, co-
4 location, number of portability and unbundled network
5 elements, especially the local loop. Today and tomorrow,
6 you will hear many well thought-out, maybe even well
7 intentioned enterees ranging from immediate unconditional
8 approval of the merger to outright denial.

9 The written submittals which you and the
10 Commissioners will analyze and digest will provide the
11 record and the evidence necessary for the Commission to
12 undoubtedly make the right decision required by your public
13 interest obligation.

14 NextLink will submit its own detailed comments
15 outlining our experience in these markets where we have a
16 presence with SBC and Ameritech, and our recommendations on
17 the conditions we believe are necessary to protect consumers
18 and to promote local competition.

19 But in the few minutes this morning that I have
20 with you, I would like to highlight just three very simple
21 points. If the record permits the Commission to approve
22 this merger, first, the Commission should adopt policies
23 that are the least regulatory, yet most effective in
24 enduring mechanisms to safeguard consumers in emerging local
25 competition.

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1 Second, any conditions must include self-enforcing
2 remedies based upon proven performance standards. Third,
3 non-discriminatory access to the local loop remains the most
4 critical component to advancing local competition.

5 The Commission is not charting new territory today
6 in its merger review. Instead, history is our guidepost
7 here. This is the third Bell merger to come before the
8 Commission since the '96 Act. A close look at the aftermath
9 of the Bell Atlantic-NYNEX merger shows that well-meaning,
10 but vague conditions will be exploited by the merged entity.

11 We believe the Commission will conclude that Bell
12 Atlantic has breached its post-merger commitments that were
13 the linchpin of the Commission's approval of the merger.
14 The Commission will no doubt be compelled to revisit and we
15 hope strengthen those conditions to prevent the backsliding
16 that has repeated occurred.

17 Based on our experience, the need for the
18 establishment of concrete conditions in this case is even
19 more compelling. The record is replete with horror stories
20 of the applicants' individual attempts to thwart competition
21 through the use of strategies and tactics including
22 litigation, legislation, contrived incompetence and blatant
23 noncompliance.

24 If the merger is approved unchecked, the delays
25 and impediment created by the merged entities could prove

1 virtually unsurmountable. With less benchmarking and
2 expanded market control, the merged entities will be
3 incapable -- will be capable of greater discriminatory
4 behavior and could more widely practice that behavior, and
5 it would be less detectable.

6 Therefore, the Commission should follow the lead
7 of states like Ohio and adopt what parties have variously
8 called universal pick-and-choose, most favored nation, or
9 best practices requirements. This unobtrusive regulatory
10 mechanism simply would require that the terms and conditions
11 available to one carrier in one market are available to all
12 carriers in all markets.

13 And if SBC receives terms and conditions as it
14 pursues its local-national strategy, it should make those
15 terms and conditions available throughout the region. As
16 the Ohio Commission noted, an SBC senior executive
17 "explicitly acknowledged that if SBC receives a certain
18 level of interconnection or UNEs out of region, it could not
19 credibly deny the same level of interconnection in region."

20 Second, the Commission should also overcome the
21 merged entities' greater financial dependence on local
22 market revenue; and therefore, reduce incentives to comply
23 with the Telecom Act and local market opening policies. The
24 Commission --

25 DR. KRATTENMAKER: Mr. Salezni, thank you. Your

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1 time is expired.

2 MR. SALEMNI: Okay. Thank you.

3 DR. KRATTENMAKER: Thank you very much. Mr.
4 Sallet -- we'll hear from MCI next.

5 MR. SALLET: Thank you. I'm Jonathan Sallet,
6 Chief Policy Counsel of MCI-WorldCom. I appreciate the
7 chance to appear here today. Our fundamental view is that
8 the Commission should reject this merger application. It's
9 not in the public interest.

10 It would create simply a mega-Bell with control
11 over one-third of the nation's access lines. And we have no
12 doubt, based on MCI-WorldCom's experience as a company that
13 is attempting to enter the local markets for voice and data,
14 that local entry would be further hampered by increased
15 bottleneck control that would come from this merger. And,
16 of course, it would be lost a powerful competitor who could
17 enter into either other's regions.

18 As we see it, approval of this merger would simply
19 approve the view that all the king's horses and all the
20 king's men could combine to put together the Bell System
21 again. The only purported theory in advance -- in --
22 support in the notion that this is in the public interest is
23 the national-local -- so-called national-local strategy
24 that's been put forward.

25 But the fact of the matter is there is no basis to

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1 believe that this merger is necessary for either of these
2 two companies to launch local competition out of their
3 region anywhere in the United States. Thus, we have a
4 circumstance here where there is no public interest. And
5 any public interest must come, therefore, from conditions
6 that are applied.

7 That's an unusual situation. We're not just
8 trying to mitigate danger. The only rationale for approval
9 under the public interest standard under this merger would
10 come from conditions that make the merger in the public
11 interest.

12 I think it's worth taking a moment to think about
13 the nature of conditions in mergers. There are two basic
14 kinds: structural conditions of the kind that accompanied
15 the breakup of AT&T. They are simple in the sense that they
16 can be simply described. They are self-effectuating in the
17 sense that they do not burden a regulatory agency with a
18 series of enforcement responsibilities that may tax its
19 resources. And they are advantageous for that reason.

20 By contrast, behavioral conditions which attempt
21 to constrain conduct through regulatory means require a
22 great deal of resources. I believe it was already noted
23 that the merged entity would have a hundred times more
24 employees than the FCC. There just aren't enough policemen
25 around the country to be on every street corner of an SBC-

1 Ameritech monopoly to make sure every regulatory condition
2 was satisfied.

3 But a particular problem with behavioral
4 conditions comes when they are imposed and applied only
5 after a merger is consummated, when they have to be
6 initially satisfied only after a merger is consummated,
7 because here we have not just the problem of backsliding.
8 We have the question of whether they ever climbed the
9 mountain in the first place.

10 The reason we are so concerned about this and some
11 might suggest passionate, is that we have lived through an
12 example of a Bell merger where the basic conditions were
13 behavioral, not structural, to be satisfied after the merger
14 closed, not before.

15 Now, I speak myself with some personal experience
16 on this. When the Bell Atlantic-NYNEX merger conditions
17 were first put forward, I on behalf of then-MCI publicly
18 applauded them as a means to effectuate the opening of local
19 markets. And I will say that I and my company have been
20 greatly disappointed; that in fact conditions which we
21 thought would help open up the market have turned only into
22 more opportunities for regulatory obstruction on the part of
23 a telephone monopoly.

24 A review of what's happened there I think is an
25 important lesson for the Commission to consider as it thinks

1 about conditions. A series of complaints have been filed,
2 two already, that have sat at the Commission for almost a
3 year without resolution yet. And we're being forced to file
4 another one because Bell Atlantic has not imposed the
5 uniform OSS systems that are absolutely required to open up
6 that region's markets.

7 DR. KRATTENMAKER: Mr. Sallet, at the risk of
8 ruining your last -- organization for your last 30 seconds,
9 please excuse me, I have to ask this question.

10 MR. SALLET: Yes, sir.

11 DR. KRATTENMAKER: Is it not the case that in the
12 MCI-WorldCom merger, that the entity agreed to certain kinds
13 of post-merger behavior which the Commission accepted in the
14 form of a letter or a phone call from the chairman; and is
15 it not therefore a little bit strange to hear MCI-WorldCom
16 now telling me the post-merger conditions are inherently
17 flawed and --

18 MR. SALLET: No. No, it isn't.

19 DR. KRATTENMAKER: -- valueless?

20 MR. SALLET: The only condition, the only formal
21 condition on the MCI-WorldCom merger -- and this I think
22 helps make my point -- was the structural condition that had
23 to be satisfied before close which was the divestiture of
24 the then-MCI internet backbone. Now --

25 DR. KRATTENMAKER: Does this mean that you are

1 taking back your promises on roll-out of --

2 MR. SALLET: No.

3 DR. KRATTENMAKER: -- services to multiple
4 dwelling units?

5 MR. SALLET: No, not at all. We are going to
6 continue those because as we explained to the Commission at
7 the time, it is in our economic interest to enter markets
8 and provide competition, both residential and business. And
9 that is the stark contrast here where the conditions imposed
10 on Bell Atlantic in the Bell Atlantic-NYNEX merger were
11 against its economic interests, although they were formal
12 conditions. And therefore, Bell Atlantic has never been in
13 much of a position to want to satisfy them.

14 And this is I think a very critical distinction
15 when one looks at the merger of monopoly entities, which if
16 you will indulge me just to close on this point -- which is
17 the reason why we are being very straight-forward in saying
18 that as the Commission considers conditions of a behavioral
19 kind particularly, the Commission should insist that they be
20 fully satisfied before merger close so that, for example, we
21 can be certain that advanced technologies, broad band data
22 applications, are already able to be deployed over the local
23 networks; so that combination of unbundled elements are
24 already being provided by the time the merger closed; and
25 that OSS, which is a critical bottleneck for the placement

1 of orders on behalf of local customers, are already being
2 processed in an effective way by the time any merger would
3 be allowed to close. Thank you.

4 MR. ATKINSON: Thank you. I think we should close
5 the proceedings because it's not even the morning anymore.
6 We've just sort of gone past the noon hour. As I indicated
7 at the beginning, we will break for one hour. So we will
8 start promptly at 1:15 and then take one break in the middle
9 of the afternoon and try to get as many speakers through the
10 afternoon. Thank you very much.

11 (Whereupon, the hearing was recessed to reconvene
12 at 1:15 p.m., this same day.)

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A F T E R N O O N S E S S I O N

1:15 p.m.

1 MR. ATKINSON: Okay. We're ready to begin
2
3 momentarily. So if everybody could take their seats. We
4 are trying to run a very tight ship here on the schedule.
5 And actually, one of my colleagues did a calculation that
6 indicated if we could keep up the pace we had before lunch,
7 conceivably we might actually get through the entire list
8 today. That is, we are not just going to rush through for
9 the sake of rushing through.
10

11 But, you know, there is a long list of people.
12 And I'm sure some people would prefer that we conclude
13 today. On the other hand, we will -- we are -- we have this
14 room for all tomorrow morning, as well, if necessary. So
15 with that, I believe our first speaker this afternoon is
16 David Newburger for the Campaign for Telecommunications
17 Access. Mr. Newburger.

18 MR. NEWBURGER: That's right. A pleasure to be
19 here. I am David Newburger, Director of the Campaign for
20 Telecommunications Access. The campaign is a loose-net
21 organization or coalition of organizations run by people who
22 represent and who are people with older -- who are older
23 adults, people with disabilities and represent other
24 disadvantaged groups.

25 Several spokespeople from the various

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1 organizations involved are also with me today. I speak
2 today in support of the proposed merger of the SBC-Ameritech
3 merger. To understand why we take this position, we start
4 from our key public policy question. That is whether
5 existing and future technologies will reach all ordinary
6 citizen consumers, especially those like many older adults
7 and people with disabilities who have special uses for
8 future technologies.

9 We believe that we will get those technologies
10 disseminated through the universal service funds -- we do
11 not believe that we will get those technologies disseminated
12 through the universal service funds strategy. Put whatever
13 face on it one likes, the truth is that the e-rate is in
14 trouble politically.

15 As such, we are at serious risk of not even
16 rolling out broad band telecommunications to libraries and
17 schools, let alone to neighborhoods and homes. No universal
18 service funding is designed or will support a significant
19 build-out of broad band capacities to our homes and offices
20 even in high cost areas and poor neighborhoods.

21 For the foreseeable future, universal service
22 funding will not support such things as video conferencing,
23 even though video conferencing constitutes basic telephone
24 service for people who are deaf and who use sign language as
25 opposed to English to communicate.

1 Further public -- further, we're faced with in the
2 universal service area the problem of public relations
3 campaigns spearheaded by many of the new competitors who
4 shamelessly encourage a public backlash to funding subsidies
5 explicitly, all the while working themselves to squeeze
6 implicit subsidies out of the system.

7 These campaigns are acting in total disregard of
8 the public policy of ensuring that all Americans have
9 affordable, useable access to present and future
10 telecommunications technologies. And most competitors,
11 local and long distance, have expressed little or no
12 interest in competing for residential consumers.

13 We in our campaign wish that that were not true.
14 The campaign endeavors to support all industry segments that
15 promise to bring broad band service to that so-called last
16 mile. But much as the campaign might like there to be more
17 choices, the fact is only companies that are providing the
18 service today on anything near a universal basis are the
19 local telephone companies like SBC and Ameritech.

20 Therefore, they are the best hope for bringing
21 advanced telecommunications services to the people we
22 represent. The question then becomes will they bring those
23 technologies to us that last mile and how can we convince
24 them to do so.

25 Some would say local telephone companies cannot be

1 trusted to roll out technologies the last mile to all
2 consumers without imposing a series of legal requirements.
3 Yet many facts indicate that those companies are actually
4 willing to roll that technology out to us.

5 The local telephone companies are, after all,
6 invested in universal service. Upgrading is more feasible
7 than building the service anew. They have a corporate
8 tradition and image of serving everybody in their service
9 areas, a matter that they would -- may give them the
10 competitive edge and one can expect, that they would not
11 ignore.

12 As you hear other testimony that you're going to
13 hear today, I think that you will hear, for example, about
14 the NAACP which grades companies like SBC and Ameritech
15 among the highest in the telecommunications industry. SBC
16 is actively -- and we've chatted about this -- talking in
17 terms of a broad roll-out of ADSL service which brings us
18 that broad band technology that we are looking for to come
19 that last mile and in a context that is affordable to us.

20 If the -- and that implies that they believe there
21 is a value for them bringing advanced telecommunications
22 service to us. If these companies have that interest, how
23 do we encourage them to go the last mile? Certainly
24 imposing barriers and disincentives is obviously counter-
25 productive.

1 Allowing them to increase their internal financial
2 streak is likely to have the probability that they will roll
3 out the technology as the campaign desires. If local
4 telephone companies have significant capital resources, they
5 can at least take a very long view on their investments.

6 And the proposed merger enhances their capital
7 needs such is obvious from the simple fact that it's what
8 they want to do. And Lord knows, they're not trying to
9 become smaller.

10 The Commission for those reasons in our view
11 should authorize the merger. These are the only companies
12 playing the residential consumers' tune. Thank you very
13 much.

14 DR. KRATTENMAKER: Thank you, Mr. Newburger.

15 MR. NEWBURGER: Thank you.

16 DR. KRATTENMAKER: I would also like to thank you
17 for the effort you've made to be involved in this proceeding
18 from the beginning. And we've welcomed your participation.
19 Thank you very much.

20 MR. NEWBURGER: Thank you.

21 DR. KRATTENMAKER: Now, we've had some revisions
22 in the list. If I'm right, the Communications Workers of
23 America will speak next.

24 MR. ATKINSON: That's a swap just for other
25 people --

1 DR. KRATTENMAKER: That's a swap for those of you
2 keeping score out there. Thank you.

3 MS. EASTERLING: My name is Barbara Easterling.
4 Excuse me. I am the Secretary-Treasurer of the
5 Communications Workers of America. And today I'm also
6 speaking for the IBW Union who supports the merger and our
7 position, as well.

8 CWA represents more than 110,000 employees at SBC
9 and Ameritech, and these workers and their families have put
10 their lives on hold for over a year and are indeed
11 encouraged to learn that the Commission has set a June
12 deadline for the merger review.

13 CWA believes that the Commission should approve
14 the merger expeditiously because it will benefit both
15 workers and consumers. The proposed merger will stimulate
16 out-of-region investment and create good jobs in the
17 telecommunications industry and throughout the economy. It
18 will protect and advance the provisions of affordable
19 quality services to all Americans.

20 And finally, the merger will allow SBC and
21 Ameritech to compete on a somewhat more level playing field
22 with other global carriers such as AT&T and MCI-WorldCom.
23 The driving force behind the SBC-Ameritech merger is out-of-
24 region business expansion. SBC-Ameritech's national-local
25 strategy calls for an additional two billion in capital

1 investment and 23.5 billion in operating expenditures in
2 order to enter 30 new markets.

3 Unlike the big promises the Commission has
4 received in other merger reviews, SBC and Ameritech have
5 provided the Commission with specific plans, detailing this
6 planned investment which will create an estimated 8,000 new
7 jobs. These will be good jobs with good pay, good benefits
8 and progressive labor-management relations necessary for a
9 skilled productive career work force providing quality
10 service for consumers.

11 The Commission can test SBC-Ameritech's promise to
12 create new jobs through growth against the actual experience
13 after the SBC-Pactel merger. In the two years since the
14 SBC-Pactel merger closed, SBC's additional investment in
15 California and Nevada has created 4,500 new jobs for
16 occupational employees in those states.

17 Second, CWA believes that the SBC-Ameritech merger
18 will advance and protect affordable, quality
19 telecommunications service for all Americans. According to
20 most leading telecommunications analysts, the new
21 telecommunications marketplace will evolve to the point
22 where there are five or six fully integrated players.

23 Absent the proposed merger, SBC and Ameritech will
24 lose their largest sources of revenue, large business
25 customers, to the fully integrated global carriers that are

1 able to provide customers with a full range of local, long
2 distance and data services over their own facilities. The
3 result of the loss of large business customers will be
4 financially weaker companies with fewer internal resources
5 to invest in the public switch network.

6 This is important implications for consumers and
7 small business customers. Unlike the fully integrated
8 global carriers, SBC and Ameritech have the legal obligation
9 to serve everybody. Should SBC and Ameritech lose the
10 significant portion of their high-margin corporate revenue
11 base, this will reduce internal resources available to
12 maintain and upgrade the networks serving residential and
13 small business customers.

14 Therefore, the best prospect for preserving and
15 advancing universal service in a competitive environment is
16 to ensure that the carrier such as SBC and Ameritech that
17 must serve everybody have the ability to compete on a level
18 playing field with integrated global carriers that do not
19 share this obligation.

20 Finally, the Commission's concerns about the anti-
21 competitive impact of the proposed merger and local markets
22 is misplaced. The pro-competitive regulatory regime of the
23 Telecommunications Act, the growth of the internet and data
24 traffic, and the emergency of new technologies such as
25 wireless and cable are breaking down the potential power

1 local telephone companies have through their control of the
2 copper wire to the home.

3 A look at the top telecommunications carriers as
4 valued by investors is revealing. The integrated global
5 carrier such as AT&T, MCI-WorldCom, as well as foreign
6 carriers such as NTT, Deutsche Telecom, British Telecom and
7 France Telecom have the largest market capitalization,
8 reflecting the financial community's expectation that these
9 carriers have the greatest growth potential.

10 Current market structures leave the local
11 telephone company such as SBC and Ameritech financially
12 weaker than these integrated global carriers with market
13 capitalization far below that of global carriers. The
14 leading U.S. and foreign telecommunications companies have
15 amassed hundreds of billions of dollars to build new
16 networks and to provide new services to business and
17 consumers in the United States.

18 The Commission should approve the SBC-Ameritech
19 merger so that these companies have the scale and the scope
20 necessary to compete in the global marketplace. And let me
21 add that regulatory oversight of SBC and Ameritech will
22 continue after merger approval. State commissions will
23 continue to regulate their local rates, protecting consumers
24 in local markets where competition is slow to develop.

25 The Telecommunications Act regulatory framework

1 mandating non-discriminatory inter-connection policies, long
2 distance market entry requirements and other safeguards to
3 protect against market power will also continue in a post-
4 merger environment. Thank you.

5 DR. KRATTENMAKER: Ms. Easterling, thank you very
6 much.

7 MR. ATKINSON: Thank you.

8 DR. KRATTENMAKER: I now believe we are back to
9 the original list and Supra Telecom and Information Systems.

10 MR. BOECHTEL: Good afternoon. My name is Mark
11 Boechel and I am speaking on behalf of Supra
12 Telecommunications and Information Systems, a competitive
13 local exchange carrier based in Miami, Florida. First, we
14 would like to thank you for the opportunity for us to speak
15 here.

16 Second, we would like to say that we concur with
17 the analysis of the anti-competitive and public interest
18 problems raised by this Commission's staff earlier today.
19 We, too, believe that the merger is simply an effort to bulk
20 up against competition.

21 As a CLEC formed as a result of the
22 Telecommunications Act, Supra has found it almost impossible
23 to compete against these Baby Bells, as you said, using
24 resell, co-location and access to unbundled network
25 elements. Although the Act requires these companies to

1 provide access to co-location and UNEs, practically reality
2 has shown this to be quite illusionary.

3 Supra agrees that any conditions to be placed on
4 the proposed merger must be concrete and definitive with
5 severe penalties for non-compliance, perhaps even a consent
6 judgement of breaking them back apart. That would be very
7 severe.

8 Supra also believes that in reality, structural
9 conditions rather than behavioral conditions are far more
10 likely to work since even the most carefully crafted
11 agreements can be torn apart by lawyers to render
12 obligations meaningless. To date, CLECs have invested over
13 30 billion dollars in the telecommunications market, but
14 have only been able to garner two percent of the country's
15 access lines.

16 This compares to the approximately 180 billion
17 dollars invested in the incumbents with a 98 percent market
18 share. Obviously, it's extremely difficult for CLECs to
19 break into these local markets. And it's very costly, as
20 well.

21 Supra has brought forth a proposal to this
22 Commission which we believe would, number one, increase the
23 facilities-based competition in these regions, and two,
24 encourage competition in the local residential and small
25 business markets. Supra's proposal is based upon the

1 premise that incentives for competition on a micro-economic
2 level will translate into incentives for competition in the
3 local telecommunications markets.

4 In concept, our proposal recognizes that the
5 reason we have competition in the long distance market is
6 because there exists competitive and multiple networks.
7 Supra proposes that the -- this merger be conditioned upon a
8 divestiture of central office assets to a number of CLECs.
9 Although the specifics of the divestiture is open to
10 discussion as in terms of numbers and quantities, Supra
11 would propose that perhaps a percentage of maybe 30 percent
12 of all central offices evenly distributed throughout these
13 regions be divested to various CLECs.

14 This divestiture scheme would create a "swiss
15 cheese-like" landscape of competing central offices within a
16 few miles of each other. Residential and small business
17 consumers could then be within a few miles of perhaps three
18 or four different facilities-based competitors.

19 The reduced distances will encourage competitors
20 to branch out into these areas serviced by competing central
21 offices. For example, office buildings, new residential
22 developments and things of that nature could be five to ten
23 miles away from multiple facilities-based competitors.

24 Those competitors might find it more economical to
25 run a line or fiber optic cable or what not to a remote in

1 that region in order to compete for that business. If it's
2 an office building or new development, there are incentives
3 to try to go under that competition.

4 This would -- additionally, this divestiture
5 proposal would benefit these companies by giving them a
6 launch-pad for their 271 approval. Also, if you consider
7 three or four competitors or more within several miles of
8 each other, this would -- this would encourage the opening
9 of UNEs and co-locations since third parties who don't have
10 access there might have the incentive to run the cable out
11 there themselves into a competing area in which a
12 facilities-based person who is not competing there would
13 certainly want to offer space, co-location or access to the
14 unbundled networks elements because they're just going to
15 garner new -- new customers.

16 In conclusion, Supra Telecom believes that this
17 divestiture scheme, if worked out, could increase
18 competition; could help jump-start competition by creating
19 competing networks which is why you have a lot of
20 competition in the long distance network. On a micro-
21 economic level, we think that it would work. And we would
22 ask that you give this serious consideration. Thank you.

23 DR. KRATTENMAKER: Thank you very much.

24 MR. ATKINSON: Thank you very much. CompTel.

25 DR. KRATTENMAKER: I believe next on the list is

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1 CompTel. Mr. Frisby.

2 MR. FRISBY: Thank you. Good afternoon,
3 gentlemen. My name is Russell Frisby. I am President of
4 the Competitive Telecommunications Association. CompTel
5 appreciates the opportunity to testify this afternoon.

6 As a national association, CompTel represents a
7 variety of competitive telecommunications providers and
8 suppliers. Our 338 members include both large, nationwide
9 companies, as well as scores of regional carriers providing
10 local, long distance and internet services.

11 In CompTel's view, this merger should not be
12 approved because it is not in the public's interest, neither
13 is it in the ultimate interest of consumers because the
14 ultimate interest of consumers is always more competition.
15 However, I'm not going to focus on that this afternoon. I'm
16 going to focus on conditions. And particularly, I am going
17 to focus on two concerns that we have.

18 The first concern pertains to the consequences of
19 allowing SBC-Ameritech to compete in-region by selling its
20 own local exchange services through its own CLEC affiliate
21 or, as I call it, an ILEC-CLEC. The second concern pertains
22 to the implications of SBC-Ameritech's national-local
23 strategy.

24 We are submitting written testimony. And we also
25 not our support of the conditions which have been proposed

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1 by other parties.

2 With regard to the first concern, SBC-Ameritech is
3 likely to compete against itself by forming a CLEC
4 affiliate, or the ILEC-CLEC. This ILEC-CLEC would be able
5 to offer -- if that ILEC-CLEC would be able to offer local
6 exchange service by reselling the local services of the
7 ILEC, there will be two very serious consequences.

8 First, it would enable SBC-Ameritech to severely
9 limit its competition. Second, it would enable SBC-
10 Ameritech to avoid making network element-based local
11 competition workable. In both instances, this would be a
12 clear impairment of the FCC's ability to enforce the Act and
13 to achieve the goals of the Act.

14 It is by now obvious that service resale just
15 doesn't work. Why then, you ask, would an affiliate ILEC-
16 CLEC choose to engage in service resale. There is a three-
17 fold answer. First, the ILEC-CLEC is not affected by the
18 small wholesale discount or by excessive retail rates
19 because payments for resold services are made to an
20 affiliate. Effectively, payments are shifted from one
21 pocket to another.

22 Secondly, the ILEC continues to receive access
23 revenues associated with the CLEC's customers. Unlike other
24 CLECs, it is not concerned about the fact that in service
25 resale, access revenues stay with the ILEC. Third, the

1 ILEC-CLEC does not mind the fact that with service resale,
2 it cannot distinguish its services from those of the
3 incumbent because it actually wants to be perceived as part
4 of the incumbent.

5 To address this problem, CompTel proposed the
6 following condition: If SBC-Ameritech is allowed to have an
7 in-region ILEC affiliate, ILEC-CLEC, that affiliate must not
8 be permitted to compete through the resale of the
9 incumbent's retail services. Like other CLECs, it must use
10 the ILEC's network elements.

11 This condition will put both the SBC-Ameritech
12 affiliate on the same footing as other CLECs who will also
13 provide strong incentives for the SBC-Ameritech -- for SBC-
14 Ameritech to make unbundled network elements, co-location
15 and OSS readily available.

16 Our second concern goes to the national-local
17 proposal. SBC and Ameritech have announced that one of the
18 reasons they intend to merge is so that they may offer
19 "national-local customers" a package that combines a
20 customer's local service across a larger incumbent
21 footprint.

22 One element of this strategy will be for SBC-
23 Ameritech to bundle a customer's local service where it
24 retains a local monopoly with service it offers in markets
25 where SBC-Ameritech will compete as a competitive entrant.

1 By bundling monopoly and competitive services in a single
2 package, SBC-Ameritech will be able to leverage its
3 incumbent monopoly into other markets including out-of-
4 region markets where competition is just beginning to
5 emerge.

6 CLECs in contrast have no incumbency to leverage.
7 They can't match this. This is wrong.

8 Therefore, we propose that SBC-Ameritech should
9 not be permitted to leverage its market power. To address
10 this problem, the Commission should condition approval of
11 the merger by prohibiting SBC-Ameritech from offering
12 service packages that combine in-region services with out-
13 of-region services and from jointly marketing or otherwise
14 linking in-region and out-of-region services.

15 In conclusion, CompTel urges the Commission to
16 carefully consider the enormous consequences that would
17 follow if this merger is allowed to go forward as presently
18 structured. If the Commission chooses to approve the
19 merger, it must do so only subject to conditions including
20 the central conditions I have just described. Thank you
21 very much.

22 DR. KRATTENMAKER: Thank you. And I believe I
23 heard you say you were going to put a longer statement in
24 the record.

25 MR. BOECHEL: Yes, we are. Yes.

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1 DR. KRATTENMAKER: Thank you. I appreciate that.
2 Mr. Moir, Internet --

3 MR. MOIR: RCA.

4 DR. KRATTENMAKER: -- I'm sorry, RCA. Excuse me.

5 MR. MOIR: ICA.

6 DR. KRATTENMAKER: International Communications
7 Association.

8 MR. MOIR: For the record, my name is Brian Moir.
9 I am a partner in a Washington, D.C. law firm and counsel
10 for the 600-plus business, educational and institutional and
11 governmental users of the International Communications
12 Association.

13 I, too, was struck in reading the initial
14 participants' list today. So I would like to take you up on
15 your suggestion at the beginning by stating kind of the
16 opposite, and that is to emphasize that ICA's public policy
17 activities have never been, are not, nor will be directly or
18 indirectly funded by the telecom vendor community, a
19 statement which I am sure a number of people who are
20 following me today might not be able to make.

21 Put it another way, I would like to stress that
22 ICA's views are strictly those of the telecom end-user
23 community, crafted by people who are responsible for putting
24 together telecom end-user budgets every day of every year.

25 ICA, as many of you know, has long been a believer

1 in competition as the ultimate safeguard for the telecom
2 industry. Unfortunately, despite the efforts of earlier
3 commissions, Congress and the courts, the significant
4 progress made in developing competition in the long distance
5 and equipment industry has not yet found its way in the
6 local market -- the local telecom market.

7 What do I mean? Meaningful competition in a local
8 exchange market is still an illusive objective. Therefore,
9 any decisions the Commission makes, any and all decisions
10 they make, that affect the players involved in provisional
11 monopoly services in these markets should be viewed very,
12 very carefully because not only do they impact the potential
13 growth of competition in that local market, but as I'll
14 mention in a few minutes, they may impact some markets where
15 we've had a degree of success over the years.

16 Your role at the Commission has been made more
17 difficult due to changes in the Clinton-Gore administration
18 antitrust leadership in recent years. We have been fairly
19 blunt in our criticism of these policies in the last few
20 years because basically it appears that any telecom merger
21 is now okay. That now means that all BOCs stop at the
22 Commission.

23 We sympathize with you. But either way, it's now
24 your job. A number of concerns have been raised earlier
25 which we share. As a consequence, I would like to focus on

1 two; one dealing with the local exchange competition. And
2 that is first that a number of very commendable promises
3 have been -- and statements and commitments have been made
4 in the application by SBC.

5 Specifically, they've talked about local service
6 entry in some 30 cities outside of their region. We applaud
7 that. What we think though, given the discussion we've seen
8 over the years and its human nature, the Commission if it's
9 going to look favorably upon those in its ruling has an
10 obligation, albeit to be submitted confidentially, to
11 require that detailed plans be submitted, the kind of
12 business plans that any CLEC goes through in its day-to-day
13 operations as it's about to enter a market.

14 What do those things involve? The capital
15 investments they are going to make and infrastructure and
16 OSS systems and human resources. What markets are they
17 going to target; just not they're going to target customers.
18 Residential, what type of services are they going to offer.
19 Small business, what type of services are they going to
20 offer. Same with medium-size and large-size businesses.

21 Those things will be kept proprietary by the
22 Commission. But those should, after the Commission reviews
23 them, tell the Commission whether these are sincere efforts
24 on the part of the SBC team to be real and actual
25 competitors or merely provide dummy statements to try to

1 smooth the process through the Commission.

2 Second, long distance competition. How is that
3 relevant? Some of us saw during the Telecom Act ads and
4 newspapers around the country by out-of-region RBOCs maps of
5 the country. Call anywhere in the country, X cents;
6 typically in most ads, 19 cents.

7 DR. KRATTENMAKER: One minute remaining.

8 MR. MOIR: In their home region, about four or
9 five cents less. What were they doing? Discounting access.
10 We have proof and actual proof that they intend to use
11 access to subsidize their entry into long distance. If the
12 FCC does not address this issue soon, not as a condition of
13 the merger, but deal with it soon, it will undermine two
14 decades of work by Congress, the FCC and the industry to try
15 to create competition in a market that's now working fairly
16 well.

17 We will be submitting detailed ex parte with a
18 number of concerns.

19 MR. ATKINSON: Mr. Moir, thank you.

20 DR. KRATTENMAKER: Thank you very much. You'll be
21 including that proof?

22 MR. MOIR: Yes, sir. We'll put the ad in there --

23 DR. KRATTENMAKER: Please.

24 MR. MOIR: -- which has been well publicized and
25 handed out even on the eighth floor. Thank you.